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10/659,817	09/11/2003	David Neff	MLCZ 2 00106	5262

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EXAMINER

KASTLER, SCOTT R

ART UNIT	PAPER NUMBER
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1742

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Please find below and/or attached an Office communication concerning this application or proceeding.



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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/659,817
Filing Date: September 11, 2003
Appellant(s): NEFF, DAVID

Scott A. McCollister
For Appellant

EXAMINER'S ANSWER

MAILED

FEB 10 2006

GROUP 1700

This is in response to the appeal brief filed on 12/15/2005 appealing from the Office action
mailed on 6/15/2005.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

Claims 1-5 11-17 and 19 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Stankiewicz. Stankiewicz teaches an apparatus (43) for filtering molten metal in molten metal transport conduits, including dosing tubes, (see col. 3 lines 24-27 for example) including a mounting portion (11) which can be dimensioned to fit around and mounted to a dosing tube through it's annular portions (13) the filter body (21) including a cylindrical body (29) and planar surface (27, 31) attached to, and substantially covering the flat end (15) of the mounting portion (11) , thereby defining a closed filtering surface area (enclosed body), where the filter is advantageously made of ceramic particles, including silicon carbide or aluminum oxide, bonded with an aluminum alloy resistant glass binder (see col. 7 lines 60-65 for example), thereby showing all aspects of the above claims except that the cylindrical portion of the filter have a beveled end to which the planar surface is attached. However, the filter apparatus of Stankiewicz operates in substantially the same manner with substantially similar stated results as the instant filter configurations. It has been well settled that where the applied prior art teaches a claimed apparatus or component (in the instant case, the filter), absent any demonstrated new or unexpected results arising therefrom, motivation to alter the shape or configuration of the apparatus or component already taught by the applied prior art, would have been a modification obvious to one of ordinary skill in the art at the time the invention was made. See MPEP 2144.04 IV B, and *In re Dailey*, 149 USPQ 47. In the instant case, since no new or unexpected result has yet been shown to arise from the use of a filter configuration including a beveled end as instantly

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claimed, motivation to alter the filter shape of the filter (21) of Stankiewicz, to any desired shape or configuration, including the shape recited in instant claim 6, would have been a modification obvious to one of ordinary skill in the art at the time the invention was made.

(10) Response to Argument

Appellant's argument that since the appealed claims are directed to an apparatus, that any asserted new or unexpected results arising from the particularly recited filter shape need not be supported by evidence presented in proper affidavit or declarative form is not convincing. As clearly stated at MPEP 716.01(c) II for example, "the arguments of counsel cannot take the place of evidence in the record". "Examples of attorney statements which are not evidence and which must be supported by an appropriate affidavit or declaration include statements regarding unexpected results, commercial success...." (emphasis added). Appellants have not yet presented any evidence of new or unexpected results arising from the use of the instantly claimed filter shape compared with the prior art filter shape taught by the applied prior art (Stankewicz).

Appellant's argument regarding the asserted new and/or unexpected results arising from the use of the instantly claimed beveled filter shape compared with the filter shape recited by Stankewicz is not convincing because as stated above, these arguments have not yet been supported by any showing in proper declaration or affidavit form. See MPEP 716.01(c) II.

Appellant's argument that modifying Stankewicz to include a beveled end would render Stankewicz inoperable is not convincing. Beveling the end of the cylindrical vertical tube (29) of Stankewicz would not necessarily reduce the vertical height of the cylinder, since the cylinder could be raised at one side to maintain cylinder height. Further, since the appealed claims do not

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require that the surface attached to the beveled end be at a non-horizontal orientation, and Stankewicz includes beveled end connections (49) for the bottom portion of the sealing means, inclusion of such beveling also on the upper portion of the cylinder (29), which would also meet the requirement of a “beveled end” on the filter body portion, for the purpose of connecting plate (31) to the top of the cylinder would also not cause any height reduction of the cylinder.

Appellant’s argument that Stankewicz does not teach a filter element which could mount around a dosing tube is not convincing at least because without any recitation of either the dosing tube structure (which means any conceivable shape or size dosing tube would meet the instant claim requirements), or recitation of the specific manner in which the filter structure is modified to be able to attach or fit around the dosing tube, any configuration of filter would in some manner be able to either fit around or attach to some unspecified dosing tube. Further, Stankewicz (col. 3 lines 24-27 for example) envisions the use of its recited filter elements in any desired molten metal transport system, which includes dosing tubes.

Finally, Appellant’s argument that the filter element of Stankewicz is not suggested for use on dosing tubes is not persuasive because as stated above, Stankewicz (col. 3 lines 24-27 for example) envisions the use of its recited filter elements in any desired molten metal transport system, which includes dosing tubes.

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(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,


Scott Kastler



Conferees:



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